

***Legal Nature of Resolutions Issued by the Bodies of the Self - Government of
Legal Advisors - EU Perspective***

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Abstract

The research topic concerns the self-governing regulatory bodies of the legal profession in EU Member States and the resolutions passed by those bodies (specially issued by National Council of Legal Advisors or District Councils of Legal Advisors). The legal character of these regulations is differentiated, and, as such, generate different effects with respect to the rights and duties of the members of the self-government and to third parties. It is therefore important to classify and to analyse the nature of such resolutions, also because of the influence this may have, taking into account the possible way of filing claims or petitions with the competent court. The research conducted should answer which resolutions refer to the so called administrative matters, and, by extension, have the nature of administrative decisions (ex. the entry in the register of legal advisors); which are acts of the internal management which fall within the terms of reference of self-government (ex. resolutions exempting legal advisor trainees from paying the annual fee in part or in full, deferring due dates for the payment thereof, and on payments on instalments); and which have the nature of civil law regulations (ex. membership fee). The sources of research work include the provisions of universally binding legal provisions and internal laws, and internal provisions that regulate the laws on self-government in particular.

Keywords: advocates, legal nature, resolution, self - governing bodies

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Introduction

Pursuant to the provisions of Article 40.1 of the Act of 6 July 1982 on Legal Advisors¹ [Pol.: *radca prawny*], and in connection with Article 17 of the Act of 2 April 1997 – Constitution of the Republic of Poland, the self-government within the profession of legal advisors and trainees, is independent in executing its tasks, and, as such, is subject exclusively to the provisions of the law. The Self-government for Legal Advisors acts through its bodies of authority which take decisions in the form of resolutions, as referred to in Article 45 of the Act on Legal Advisors. The research conducted aim is to determine the legal nature of resolutions issued by the statutory bodies of authority of the Self-government for Legal Advisors, i.e. the National Convention of Legal Advisors, the National Council of Legal Advisors, the Council of the District Chamber of Legal Advisors.

The bodies of authority of the professional self-government take decisions in the form of resolutions which, in terms of their legal character, are not uniform, and, as such, generate different effects with respect to the rights and duties of the members of the self-government and to third parties. It is therefore important to classify and to analyse the nature of such resolutions. As regards the subject matter of the study, the Act of 6 July 1982 on Legal Advisors/Solicitors (uniform text published in *Dziennik Ustaw* of 2014, item 637; hereinafter referred to as the “Act on Legal Advisors”) lays down the fundamentals of the system. This is a *lex specialis* as referred to in Article 17.1 of the Polish Constitution which provides that by means of a statute, self-governments may be created within a profession in which the public repose confidence, and such self-governments shall concern themselves with the proper practice of such professions in accordance with, and for the purpose of protecting, the public interest.

In view of the above, and with due consideration for the subject matter of the study, there is a need to clearly separate the scope of work of the professional self-government that falls within the terms of reference of public tasks whose execution is vested with the self-government where, subject to the provisions of the Act on Legal Advisors, the provisions of the Act of 14 June 1960 – Code of Administrative Proceedings apply (uniform text published in *Dziennik Ustaw* of 2013, item 267, as amended), and the Act of 30 August 2002 on Proceedings before Administrative

¹ Translated verbatim, *radca prawny* (in Polish) is a legal advisor; however, pursuant to the provisions of the Act of 5 July 2002 on Rendering Legal Services in Poland by Foreign Lawyers (uniform text published in *Dziennik Ustaw* of 2014, item 134), Annex I provides a list of professional titles in Member States of the European Union that are equivalent in meaning to the profession of advocate or legal advisor. These are:

- in Belgium - Avocat/Advocaat/Rechtsanwalt,
- in Finland - Asianajaja/Advocat,
- in Germany - Rechtsanwalt,
- in Italy – Avvocato,
- in the UK - Advocate/Barrister/Solicitor.

Consequently, the term „legal advisor” in the context of this research project and its translation into English and should be understood as Advocate/Barrister/Solicitor.

Courts (uniform text published in Dziennik Ustaw of 2012, item 270, as amended) from the execution of tasks typical of corporate bodies whose decisions are not subject to judicial and administrative control.

In view of the issues presented, the research conducted should answer which resolutions taken by the bodies of authority of the Self-government for Legal Advisors refer to the so called administrative matters, and, by extension, have the nature of administrative decisions; which are acts of the internal management which fall within the terms of reference of self-government; and which have the nature of civil law regulations (such as, for example, decisions concerning contributions paid by the members of the Self-government for Legal Advisors or decisions relating to waiving fees for legal advisor's traineeship (Pol. aplikacja radcowska).

The classification of scopes of matters, as outlined above, has given rise to considerable doubts, which triggered lack of uniformity in decisions made by Voivodship Administrative Courts and by the Supreme Administrative Court. The purpose of this article is not to exhaust the topic entirely, but to underline the key elements of that subject. The aforementioned may facilitate to remove some doubts and to indicate possible directions of legal construction, which, in the opinion of the researcher, should facilitate uniformity in the subject matter in question.

The studies conducted aim to eliminating doubts in the practical application of the legal provisions analysed, indicating possible directions of legal construction which are relevant and proper in the opinion of the researcher. It is assumed that this will make the analyses conducted more comprehensive in nature, and, consequently, lead to a greater degree of uniformity in the operations of the self-government for legal advisors. Furthermore, the research will be conducive to formulating *de lege ferenda* requirements in the area discussed.

Legal nature of resolutions of District Councils of Chambers of Legal Advisors concerning applications fined under Resolution No. 43/VIII/2011 of 21 May 2011 on the principles of exempting legal advisor trainees from paying the annual fee in part or in full, deferring due dates for the payment thereof, and on payments on instalments

The case has appeared under the application of the resolution issued by the National Council of Legal Advisors under the provisions of Article 60.11a in connection with Article 32^{1.4} of the Act on Legal Advisors, which constitutes the basis on which to draw conclusions concerning the legal nature of such decisions and consequences thereof within the terms of reference of procedural law. It may be indicated that the resolution of District Council of Chamber of Legal Advisors on the subject mentioned, is not an administrative matter – therefore, the cognition of the Voivodship Administrative Court is exempted. What is more, the resolution of District Councils of Chambers of Legal Advisors concerning annual fees is a resolution of internal nature and its legal nature is even a civil one (not administrative). The legal nature of such fees should be analysed – these fees constitute a autonomous buget of the District Councils of Chambers of Legal Advisors (therefore, National Council of Legal Advisors, or courts, or other supervisory bodies – Minister of Justice, cannot issue a reversal decision with respect to the annulment of resolutions passed by the Council of the District Chamber of

Legal Advisors). The aforementioned is crucial as far as the scope of admissible control of legality by administrative courts of all deeds issued by the bodies of authority of the Self-government for Legal Advisors under the provisions of Article 3.3 of the Act of 30 August 2002 on Proceedings before Administrative Courts (Dziennik Ustaw of 2012, item 270, as amended), is analysed. Taking into consideration the legal nature of such resolutions, the control of legality by administrative courts is exempted.

The scope of supervisory powers of the Minister of Justice (Article 47 in connection with Article 5 of the Act on Legal Advisors)

The problem has arisen in the context of the wording of Article 28.4 through 28.7 of the Act on Legal Advisors (the resolution on suspending the licence to practise as a legal advisor) and Article 31.2 through 31.3 of the Act (the resolution by the Council of the District Chamber of Legal Advisors on the entries in the register of legal advisors), which is applied to legal advisor trainees under the provisions of Article 37.3 of the Act on Legal Advisors (the resolution on striking out a legal advisor trainee from the register of legal advisor trainees). This has given rise to a legal issue whether the Minister of Justice, acting within the terms of reference of his supervisory powers, may issue a reversal decision with respect to the annulment of resolutions passed by the Council of the District Chamber of Legal Advisors and the Presidium of the National Council of Legal Advisors and order the entry in the register of legal advisors. The matter in question required analysing the type and scope of supervision of the Minister of Justice within the limits defined in the Act on Legal Advisors. Taking into consideration the above, the autonomy of the self – governing bodies should be respected – the only competent body that is entitled to do the entries in the register of legal advisors, or strike out a legal advisor /legal advisor trainee from the register, is the District Chamber of Legal Advisors. The independence of the self-government bodies of authority, in the scope of the organization of legal practice structure, is strictly connected with the fact that the state narrows down, to some extent, its regulatory competence (which is strictly characteristic of state administrative bodies) and transfers it to the bodies said. It should be underlined that the state retains some scope of supervisory powers, but the strict construction of such provisions shall be made (Stahl, 2011: 509).

Conclusion

The actions undertaken under the scope of public administration range from the internal management actions shall be strictly separated. As an example, the resolution on the entries in the register of legal advisors or striking out a legal advisor from the register, may be analysed. Undoubtedly, the resolution mentioned, concerns an administrative matter. The nature of the resolution said is an individual one, and the bodies of authority of the self – government of legal advisors act under the statutory regulation. The District Chamber of Legal Advisors is a collegial body that acts in the way of issuing resolutions. The mentioned, are the way the competent body makes a statement, delivers opinions etc. As it has been presented, the body of authority deals with the matters of the individual nature. That is to evoke the individual, specific legal effect. In this manner, the resolution is the ground on which the individual may exercise rights and obey the duties (Adamiak, Borkowski, 2012: 394).

Nevertheless, an administrative act is not the only legal form the body of authority may undertake. As the legal doctrine indicates, a lot of matters of crucial significance, are dealt with the form of technical activities. An administrative act and technical activity of the body should be differentiated. The necessity for the proper differentiation is needed. Consequently, the legal nature of the resolution on the transfer of the entries in the register of legal advisors, may be determined. The mentioned is not an administrative matter, but a technical activity of the body of authority. What is more, the body of the self – government of legal advisors has no legitimacy under the provisions of the statutory act, but only of the act of internal range. Therefore, it may be posed that the resolution on the transfer of the entry in the register, is the act of the internal management legal nature, issued inside the corporal structure of the self – government of legal advisors (not within the scope of the public administration). As it is mentioned, resolutions that have legal character like the mentioned, may be described as “legal non-normative acts”. Under no circumstances these two scopes of the activity of the bodies of the self – government of legal advisors – the scope of activities undertaken within the internal structure of the legal person and these undertaken within the range of the public administration – should be mixed.

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